poses, deprive the State legislature of the power to enact laws prohibiting the sale of liquor for any purpose whatsoever. *State* v. *Weiss,* 84 Kan. 165, 113 Pac. 388, 36 L. R. A. (N. S.) 73. See also *State* v. *Kane,* 15 R. I. 395, 6 Atl. 783.

REAL PROPERTY—MINES AND MINERALS—OIL.—A remote grantor conveyed certain lands to plaintiff's ancestor, reserving a one-half interest "in all minerals in, on, or under the land". Plaintiff's ancestor conveyed to defendant's grantor "one-half of all the minerals, metals, and mineral substances of every kind and character". Subsequently oil was discovered under the land. The plaintiff claims as heir at law of her ancestor one-half interest in the oil; defendant claims through the reservation of the remote grantor and the deed of the plaintiff's ancestor. *Held,* the plaintiff cannot recover. *Lovelace* v. *Southwestern Petroleum Co.,* 267 Fed. 504, 513.

The instant case turned absolutely on whether or not oil and gas were included in the term minerals. An English case defined minerals as "all fossil bodies or matters dug out of mines". *Earl of Rosee* v. *Wainman,* 14 M. & W. 859. But as the knowledge of geology and minerals has increased, the definition has been greatly modified, and a later English case defines the term as being "every substance which can be got from underneath the surface of the earth for the purpose of profit". *Hext* v. *Gill,* L. R. 7 Ch. App. 699, 712. Perhaps the best modern definition, accepted both in England and America, is the one found in the Century Dictionary, which defines a mineral to be "any constituent of the earth's crust; more specifically, an inorganic body occurring in nature, homogeneous and having a definite chemical composition which can be expressed by a chemical formula, and further having certain distinguishing physical characteristics". See also "Mineral", 5 WORDS AND PHRASES 4513.

Petroleum would undoubtedly be classed as a mineral under this last definition and practically all the cases so hold. *Bell* v. *People,* 237 Ill. 332, 86 N. E. 593, 19 L. R. A. (N. S.) 746, 15 Ann. Cas. 511. But because of its fugitive and transient nature, somewhat different rules apply to it than to other minerals. Yet it has been held generally that oil while in the earth is a part of the realty. *Isom* v. *Rex Crude Oil Co.,* 147 Cal. 659, 82 Pac. 317; *Kelley* v. *Ohio Oil Co.,* 57 Ohio St. 317, 49 N. E. 399, 39 L. R. A. 765, 63 Am. St. Rep. 721.

However, the Pennsylvania court has held that a conveyance containing a reservation of "all minerals" does not include the right to petroleum. *Dunham* v. *Kirkpatrick,* 101 Pa. St. 36, 47 Am. Rep. 696. This view has been upheld by later decisions of the same State, and a recent decision has also included natural gas with petroleum as not being included under the term mineral. *Preston* v. *South Penn. Oil Co.,* 238 Pa. 301, 86 Atl. 203. An Ohio case holds that in the absence of other evidence, the presumption is that oil and gas are not included under this term. *Detlor* v. *Holland,* 57 Ohio St. 492, 49 N. E. 690, 40 L. R. A. 266. A Kentucky case has held exactly the same thing. *McKinney* v. *Central Kentucky Gas Co.,* 134 Ky. 239, 120 S. W. 314,

But the limits of this later case have been very closely drawn by subsequent Kentucky cases. See *Scott* v. *Laws*, 185 Ky. 440, 215 S. W. 81.

The great weight of modern authority is in direct conflict with these cases, and the leading case of *Dunham* v. *Kirkpatrick*, *supra*, has been expressedly criticized and repudiated by the courts of other States. See *Murray* v. *Allard*, 100 Tenn. 100, 43 S. W. 355, 39 L. R. A. 249, 66 Am. St. Rep. 740. Thus it is usually held that a reservation of "all mines, minerals, and metals" includes both petroleum and natural gas. *Murray* v. *Allard*, *supra*; *Weaver* v. *Richards*, 156 Mich. 320, 120 N. W. 818; *Sult* v. *Hochstetter Oil Co.*, 63 W. Va. 317, 61 S. E. 307. It is always a question of what was intended to be included. And considering the present commercial importance of both oil and gas, it seems sound both on principle and on authority that the presumption should be that oil and gas are to be included in the term mineral.

TRADE-MARKS AND TRADE NAMES—UNFAIR COMPETITION—INJUNCTION.—The defendant manufactured and sold as a beverage a compound known as "Koke" which was commonly called "Dope". The plaintiff, who manufactured and sold a beverage under the trade name of "Coca-Cola", sought to have the defendant enjoined from using either the word "Koke" or "Dope". The bill alleged that the defendant's mixture was made and sold in imitation of the plaintiff's and that in certain localities the word "Dope" was used by the public to call for "Coca-Cola". *Held*, an injunction for restraint of the use of "Koke" will be granted, but as to "Dope" the injunction will not be granted. *Coca-Cola Company* v. *Koke Company of America*, 41 Sup. Ct. 113.

The general principle that unfair competition in its essence consists of passing or attempting to pass the goods or business of one as the goods or business of another has been reaffirmed in recent cases. *Auto Acetylene Light Co.* v. *Prest-O-Lite Co.*, 264 Fed. 810; *Handel Co.* v. *Jefferson Glass Co.*, 265 Fed. 286; *Tweedie* v. *Royal Co.*, 267 Fed. 224. The criterion is whether or not the alleged infringing trade-mark is calculated to deceive the ordinary purchaser, not the careful buyer. *Handel Co.* v. *Jefferson Glass Co.*, *supra*; *Ansehl* v. *Williams*, 267 Fed. 9; *Bregstone* v. *Greenburg*, 182 N. Y. Supp. 340.

It is not essential to the granting of an injunction for the plaintiff to show that some person has been actually deceived. *Lucile* v. *Schrier*, 181 N. Y. Supp. 694. "A manifest liability to deception is sufficient." *Fuller* v. *Huff*, 104 Fed. 141, 43 C. C. A. 453, 51 L. R. A. 332; *Reading Stove Works* v. *Howes Co.*, 201 Mass. 437, 87 N. E. 751, 21 L. R. A. (N. S.) 979. Nor where damage is highly probable need the plaintiff wait until he has suffered actual injury, but may forestall loss by equitable means. *Powell* v. *Valentine* (Kan.), 189 Pac. 163.

Where a wholesaler places in the hands of a retailer an article with which to deceive the public, he may be enjoined though he does not mislead or intend to mislead the retailer. *Fox* v. *Glynn*, 191 Mass. 344, 78 N. E. 89, 114 Am. St. Rep. 619, 9 L. R. A. (N. S.) 1096 and note. However, the law of unfair competition does not protect against falsehoods told by tradesmen, but the article itself must cause deception to